

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,)
)
 v.)
) Case No. 2:18-cr-49-cr
 ANGELO EFTHIMIATOS,)
)

OPPOSED MOTION FOR RECONSIDERATION OF DETENTION

NOW COMES defendant ANGELO EFTHIMIATOS, by counsel, and respectfully requests that the Court vacate the Order of Detention, and order that Mr. Efthimiatos be released on conditions that include location monitoring. This motion is being filed pursuant to 18 U.S.C. § 3142 based on new information that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of Mr. Efthimiatos as required.¹

Case Status.

Mr. Efthimiatos was charged in a single count indictment on April 26, 2018, with knowingly and willfully serving as an airman without an airman's certificate in violation of 49 U.S.C. § 46306(b)(7). Mr. Efthimiatos was arraigned on May 4, 2018, and the Court ordered him detained. Mr. Efthimiatos remains detained and is currently incarcerated at Essex County Correctional Facility in Lewis, New York. 49 U.S.C. §46306(b)(7) carries a statutory maximum penalty of 3 years in custody.

¹ This Court did not find that Mr. Efthimiatos was a danger to the community. Instead, it found that Mr. Efthimiatos was a risk of non-appearance. *See United States v. Efthimiatos*, Case No. 2:18-cr-49, doc. 6 (Order of Detention).

Bases for reconsideration of detention.

New information has been brought to the attention of counsel that was not known at the time of the detention hearing held on April 10, 2018.² Primarily, Mr. Efthimiatos' wife and young daughter are suffering without Mr. Efthimiatos at home. According to Mr. Efthimiatos' wife, Nancy Dellamonte, their daughter was born prematurely weighing one pound and 11 ounces—a so-called “micro-preemie.” Their daughter spent nearly four months in the neo-natal intensive care unit before being sent home on round-the-clock oxygen. Mr. Efthimiatos and Ms. Dellamonte have shared in the responsibility of making sure their daughter developed in the healthiest manner possible. This included addressing her medical, physiological and educational needs.

Mr. Efthimiatos' daughter has been diagnosed with ADHD as confirmed by school records—likely a result of her premature birth. At school, Mr. Efthimiatos' daughter has been placed in special educational settings or given special learning plans. She also suffers from some physiological delays that have required physical therapy. According to Ms. Dellamonte, their daughter has suffered greatly with the sudden removal of Mr. Efthimiatos from the home.

Adding to the family's difficulties, Ms. Dellamonte herself struggles with health issues. She suffers from chronic neck and back pain with radiculopathy extending to her arms and legs. Furthermore, she is in need of a double knee replacement. The replacement surgery was originally to be scheduled for the spring, but with Mr. Efthimiatos' arrest it has been indefinitely postponed. While Ms. Dellamonte does receive social security disability, without Mr. Efthimiatos in the home she is struggling to make ends meet. Finally, at the time of his arrest,

² Counsel was not present at the initial appearance and detention hearing.

Mr. Efthimiatos was in the process of renovating their Sudbury home. Unable to complete his work, Ms. Dellamonte and her daughter are living in an only partially renovated house.

Finally, as discussed in greater detail below, the indictment and subsequent analysis of Mr. Efthimiatos' Guideline range indicates that he is facing a very short period of incarceration—especially considering the time he has already served.

Mr. Efthimiatos is not a flight risk.

If released, Mr. Efthimiatos would reside with his wife and daughter in Sudbury, Vermont. Mr. Efthimiatos seeks release to take care of his family. In light of the financial and emotional distress his wife and daughter are suffering, Mr. Efthimiatos has every intention of remaining with them unless and until the Court says otherwise. This should ease any concerns the Court has regarding risk of flight.

Mr. Efthimiatos is a good candidate for release in other respects. Mr. Efthimiatos' home is a stable, family residence here in Vermont. He does not suffer from any addiction problems and he does not suffer from any mental health issues.

Moreover, as stated above, the maximum penalty for this offense is 3 years. Notably, the applicable Guideline for a §46306(b)(7) offense is not found in Appendix A. However, courts have found the most analogous Guideline to be § 2B1.1. *See United States v. McEnry*, 659 F.3d 893 (9th Cir. 2011) (finding the appropriate Guideline for a §46306(b)(7) offense to be §2B1.1). An analysis of the Guideline range indicates that the base offense level here is a 6. No specific offense characteristics appear to apply. Thus, even before any adjustment for acceptance of responsibility, Mr. Efthimiatos would fall into Zone B of the Guidelines' sentencing table. *See* USSG, Ch. 5, Pt. A. Under such circumstances, even the Guidelines recommend a probationary

sentence. *See* USSG §5B1.1(a)(2). Mr. Efthimiatos has already been in custody for 3 ½ months.

The government will likely point out that Mr. Efthimiatos is facing revocation proceedings in the Southern District of Iowa. True enough, but because the maximum penalty on the underlying offense was 20 years, the maximum penalty for a revocation of the supervised release imposed on that offense is 2 years in custody. *See* 18 U.S.C. §§ 3559(a)(3) (defining those crimes with a maximum penalty of less than 25 years but greater than 10 years as “Class C” felonies) and 3583(e)(3) (setting the maximum custodial term at 2 years upon revocation of supervised release was imposed base on a Class C felony conviction). What’s more, even if Mr. Efthimiatos is convicted of the charge in the indictment here, he has a Guideline range only of 6 – 12 months upon revocation in Iowa. Thus, even if one considers both this case and the Iowa case in the aggregate, Mr. Efthimiatos faces a very low Guideline range. In short, he is not facing the sort of time in custody that would prompt a man with a wife and child to flee prosecution.

Accordingly, counsel moves this Court enter an order directing that Mr. Efthimiatos be released from custody on a condition that he be subjected to location monitoring and that he abide by all other conditions of release imposed by this Court. The Assistant U.S. Attorney assigned to this case (Eugenia Cowles) has conveyed to counsel that she will oppose this motion.

WHEREFORE, Mr. Efthimiatos respectfully requests that the Court grant the motion for reconsideration and order that he be released on conditions of release imposed by this Court.

Dated at Burlington, Vermont, this 27th day of July, 2018.

By: /s/ Steven L. Barth

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2018, I filed this OPPOSED MOTION FOR RECONSIDERATION OF DETENTION with the Clerk of Court using the ECF system which also sent notification of such filing(s) to the following: Assistant United States Attorney Eugenia Cowles, via eugenia.cowles@usdoj.gov.

By: /s/ Steven L. Barth
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